IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 139 of 2007
To
FIRST APPEAL No. 151 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
HARNARAYAN UNIYASHANKER & 1 - Defendant(s)

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Appearance :
Mr.S.S.Shah,learned Government Pleader for Appellants in First Appeal Nos.139 to 145 of 2007

Mr.J.K.Shah,learned Assistant Government Pleader for Appellants in First Appeal Nos.146 to 151 of 2007

MR AJ PATEL for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

Date : 02/04/2007

COMMON ORAL JUDGMENT

1. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated September 30,2005, rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos.868/98 to 878/98 and 880/98 to 881/98, by which the claimants have been awarded additional amount of compensation at the rate of Rs.25/- per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.38 Ps. per sq.mt. by his award dated December 30,1996.

2. A proposal was received by the State Government to acquire agricultural and non agricultural lands of village Dangarwa, Taluka Viramgam, District Ahmedabad for the public purpose of construction of a canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands mentioned in the said proposal were likely to

be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on July 19,1995. Necessary inquiry under Section 5 of the Act was made and a report was submitted to the State Government as contemplated by Section 5A(2) of the Act. On perusal of the said report, the State Government was satisfied that the lands of village Dangarwa specified in the Notification published under Section 4 of the Act were needed for the public purpose of construction of a canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette on January 24,1996. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq. mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 30, 1996 offered compensation to the claimants at the rate of Rs.1.38 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition

Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (R) at Navrangpura, where they were numbered as Land Acquisition Case Nos.868/98 to 878/98 and 880/98 to 881/98,

3. On behalf of the claimants, witness Chandrashankar Umiyashankar Pandya was examined at Exh.17. The witness mentioned in his testimony before the Court that his village Dangarwa was fully developed and that the population of his village was about seven thousand to eight thousand persons. According the said witness, each claimant was able to raise different crops in different seasons. The witness elaborated that during the monsoon, each claimant was able to raise crops of millet, cereals, rose, til, juvar, vegetables and cotton whereas each claimant was also able to raise crops of Raida, cumin seeds, vegetable, fennel seeds, castor seeds, and cotton during winter season. According to the witness each claimant was able to earn Rs.1 lac per year per

Vigha from the sale of agricultural produces. The witness stated that the lands situated in the sim of village Dangarwa were temporarily acquired for the purpose of ONGC for which the claimants were awarded compensation in the form of rent of the land which was fixed at Rs.11.25 Ps. per sq.mt. for three years. It was claimed by the witness that on the basis of the said previous award, the claimants were entitled to compensation at the rate of Rs.75.25 ps. per sq.mt. Though this witness was cross-examined at length by the learned counsels for the acquiring authorities, nothing substantial could be elicited.

4. The claimants submitted a list of documents at Exh.35 and produced award of the Reference Court relating to the lands of village Madrisana, Taluka Detroj, District Ahmedabad at Exh.36 and claimed that on the basis of the said award enhanced compensation should be awarded to them.

5. On behalf of the acquiring authorities witness Ghanshyamdas Omprakash Gupta was examined at Exh.20. The witness mentioned in his examination-in-chief that village Dangarwa was situated at a distance of 3 Kms. from village Madrisana and that the lands of village Madrisana were better in quality than those

of village Dangarwa. The witness further stated that village Nani Rantai was situated at a distance of 7 Kms. from village Dangarwa and produced consent award relating to the lands of village Nani Rantai at Exh.26 for consideration of the Court. The witness also admitted that the boundaries of village Dangarwa were adjoining to the boundaries of village Madrisana and that distance of 3 Kms. mentioned by him in his examination in chief was between the lands of the two villages situated in the respective Gamthal. The witness also stated that he was not knowing whether the lands of village Dangarwa and the lands of village Madrisana were even and of the same quality.

6. Yet another witness i.e. Mr. Bhupendrakumar K.Kumar, who was then discharging duties as Special Land Acquisition Officer, was examined by the acquiring authorities at Exh.24. The witness mentioned in his testimony that after taking into consideration the relevant factors, the award was made by the Special Land Acquisition Officer and, therefore, the claimants were not entitled to enhanced compensation. This witness mentioned that the distance between village Dangarwa and village Nani Rantai was roughly about 3 Kms and that the

lands situated at village Dangarwa were similar to the lands situated at village Nani Rantai. This witness also sought reliance on the consent award which was made by the Special Land Acquisition Office relating to the lands of village Nani Rantai. However, in cross examination the witness admitted that he had not made award relating to the lands of village Dangarwa and that he was deposing before the Court on the basis of official record made available to him. The witness also admitted that the amount of compensation determined by the Special Land Acquisition Officer was on the lower side. The witness further admitted that the boundaries of village Dangarwa were touching the boundaries of village Madrisana.

7. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Madrisana was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that for acquiring the lands of village Madrisana a Notification under Section 4(1) of the

Act was published in the Official Gazette on April 16,1994, whereas in the instant case it was published in the official Gazette on July 19,1995 and, therefore, in view of the time gap between the publication of the notifications, the claimants were entitled to the benefit of reasonable rise in price of the lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.25/- per sq.mt. by the impugned award, giving rise to the above numbered appeals.

8. This Court has heard Mr.S.S.Shah, learned Government Pleader and Mr.J.K.Shah, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned counsel for the claimants at length and in great detail. This court has also considered the paper book supplied by the learned counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

9. The contention that the witness for the claimants did not refer to the previous award of the Reference Court relating to the lands of village

Madrisana in his testimony nor could establish similarity of the lands of village Madrisana and lands of village Dangarwa and, therefore, the previous award of the Reference Court relating to the lands of village Madrisana should be ignored while determining the amount of compensation payable to the claimants, has no substance. It is true that the witness for the claimants did not refer to the previous award of the Reference Court relating to the lands of village Madrisana. However, as observed earlier, the previous award of the Reference Court relating to the lands of village Madrisana was brought on record by submitting a list of documents at Exh.35. The same was exhibited with consent of the parties. The learned counsels for the parties have produced award of the Special Land Acquisition Officer dated December 30,1996 rendered in the instant cases as well as the award of the Reference Court dated September 16,1996 relating to the lands of village Madrisana for perusal of the court. A bare perusal of these awards indicates that the crop patterns in both the villages were the same. It also indicates that the lands of village Madrisana were of better quality than those of village Dangarwa. Further in both the cases, the irrigation facilities

were available and different crops were being raised thereon. Thus, this court is of the opinion that the Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of village Madrisana, more particularly when it was firmly established that the boundaries of village Madrisana and those of village Dangarwa were common. As noticed earlier, the award of the Reference Court relating to the lands of village Madrisana is produced on record of the case at Exh.36. It indicates that the lands of village Madrisana were acquired for the public purpose of construction of a canal under the Narmada Project pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on April 16,1994. Therein the Special Land Acquisition Officer by his award dated September 16,1996 had offered compensation to the claimants at the rate of Rs.2.10 Ps. per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly references were made to the District Court, Ahmadabad (R) at Navrangpura where they were numbered as Land Acquisition Case Nos.2375 to 2383 of 1996. On the basis of the evidence adduced by the parties, the Reference Court by judgment and award dated November 30,2004 awarded

additional amount of compensation to the claimants at the rate of Rs.21.60 Ps. per sq.mt. i.e. in all the claimants were awarded compensation at the rate of Rs.23.70 Ps. per sq.mt. During the course of hearing of the appeals, the learned counsels for the parties have produced a simple copy of judgment dated October 30,2006 rendered by the Division Bench of this Court in First Appeals Nos.2578 to 2586 of 2006. It indicates that the award dated November 30,2004 rendered by the Reference Court in Land Acquisition Case Nos.2375 to 2383 of 1996 relating to the lads of village Madrisana was challenged before the High Court in First Appeal Nos.2578 to 2586 of 2006 and the High Court by judgment dated October 30,2006 held that the claimants were entitled to compensation at the rate of Rs.23/- per sq.mt. Thus, on the basis of the award of the Reference Court relating to the lands of village Madrisana, the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt.

10. The contention that in view of time gap between issuance of notifications published for the purpose of acquiring the lands from village Madrisana and the lands from village Dangarwa, the benefit of

reasonable rise in price of the lands at the rate of 10% per annum should be granted to the claimants cannot be accepted in view of the fact that the lands of village Madrisana were better in quality than the lands of village Dangarwa. It may be mentioned that the witnesses for the acquiring authorities had produced xerox copy of sale deeds of lands situated at village Dangarwa at Exh.28 to 33. However, relevancy of those documents could not be established either by Mr. Ghanshyamdas Omprakash Gupta, who was examined at Ex.20 nor by Mr. Bhupendrakumar K.Kumar, who was examined at Exh.24. Even it could not be stated by any of the two witnesses that the lands acquired in the instant cases were similar to the lands which were covered by those sale deeds. As relevancy of those sale deeds is not established by the acquiring authorities, the same are not taken into consideration while determining the market value of the lands acquired in the instant cases. Similarly, Jantri of village Dangarwa indicating price of the lands of village Dangarwa is also of little relevance in absence of reference to the same by the witnesses who were examined on behalf of the acquiring authorities. As observed earlier, one of the witnesses admitted that the distance between

village Nani Rantai and Dangarwa was about 7 Kms. and, therefore, the consent award which was produced at Exh.26 is also of little importance in determining the market value of the lands acquired from village Dangarwa. On an over all view of the matter, this Court is of the opinion that on the basis of previous award of the Reference Court relating to the lands of village Madrisana as modified by the High Court in First Appeal Nos.2578 to 2586 of 2006, the claimants would be entitled to compensation at the rate of Rs.23/- per sq.mt. and, therefore, the appeals will have to be allowed in part.

11. For the foregoing reasons, all the appeals partly succeed. The common judgment and award September 30,2005, rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (R) at Navrangpura in Land Acquisition Case Nos. 868/98 to 878/98 and 880/98 to 881/98 awarding additional amount of compensation to the claimants at the rate of Rs.25/- per sq.mt. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.1.38 Ps. per sq.mt. by his award dated December 30,1996, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of

Rs.23/- per sq.mt. for their acquired lands. The other statutory benefits which have been granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

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